

OFFICIAL GAZETTE

GOVERNMENT OF GOA

EXTRAORDINARY

No. 2

GOVERNMENT OF GOA

Department of Labour

Order

No. 28/39/86-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.
Subhash V. Elekar, Under Secretary (Labour).
 Panaji, 10th January, 1990.

IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri S. V. Nevagi, Hon'ble Presiding Officer)

Ref. No. IT/30/86

Shri Fernando Afonso — Party I

V/s

M/s. McDowell & Co. Ltd. — Party II

Party I, represented by Shri K. N. Rao.

Party II, represented by Adv. G. K. Sardessai.

Panaji. Dated : 29-12-89

AWARD

This is a reference made by the Govt. of Goa, by its order No. 28/39/86-ILD dated 3rd October, 1986 with an annexure scheduled thereto which reads as follows :

"Whether the action of management of M/s. McDowell & Company Limited, Bethora, Ponda, Goa, in dismissing Shri Fernando Afonso, Liaison Officer w.e.f. 15-5-1986 is legal and justified ?

If not, to what relief the workman is entitled to ?"

In this matter of the Government reference the main point arising for consideration is whether the order of termination issued against the workman by the management of M/s. McDowell & Company Limited, is legal and justified in the circumstances of the case. The workman who was working as a Liaison Officer with the Company by name Fernando Afonso was removed from service at the end of a departmental enquiry held against him. In his claim statement dated 15-12-87 the workman had challenged the findings of the Inquiry Officer on the charge sheet dated 18-7-85. In the charge sheet it was alleged that the workman who was also a Store cum Purchase Officer did not carry out the instructions at the time of the visit of the Company's Auditors. The Inquiry Officer in the recorded finding held that the Liaison Officer Fernando Afonso was negligent in his duties and the charges under serial No. 7 in the chargesheet had been proved against him by the management namely he had poor or unsatisfactory workmanship. In the written statement dated 15-4-88 the management had maintained that Fernando Afonso had not only poor and unsatisfactory workmanship but he had caused damage and losses due to willful and irresponsible actions or at times breaking rules or standing instructions given by the superiors. They have also taken a preliminary objection to the Government reference besides the above objections on merits that Shri Afonso was performing supervisory, administrative and managerial functions, drawing more than Rs. 1600/- p. m. by way of wages and as such he was outside the purview of the definition of the workman as incorporated in the Industrial Disputes Act, 1947. The workman had filed his rejoinder and thereafter I framed as many as 5 issues for my consideration on 11-5-88 and the parties went on trial.

As per my order passed below the application of the management dated 20-5-88, I proposed the following two issues to be heard as preliminary issues :

ISSUES

1. Whether Party No. II/Employer proves that Party No. I was performing supervisory, administrative and managerial functions?

nistrative and managerial functions drawing more than Rs. 1600/- per month by way of wages as alleged ?

2. If so, whether the action of the management in terminating the services of Party No. I is outside the pervue of the jurisdiction of this Court, the Party No. I not being a workman as defined u/s 2(s) of the Industrial Disputes Act, as alleged ?

Extensive evidence was recorded and lengthy submissions were made on behalf of both the parties on these two preliminary issues and now I am supposed to record my finding on these two preliminary issues. If the findings on these two issues go against the Party I/employee then the Party could not be a workman as defined u/s 2(s) of the Industrial Dispute Act and it is not necessary to record a finding on merits to consider whether the action of the management in dismissing Party I, is just, legal or otherwise. This is how the position stands and I shall carefully hold a scrutiny of the entire evidence on record to understand the crux of the whole matter, to understand the nature of the duty performed by Party I, what were his total wages and salary at the time of the issuance of the show cause notice and whether the Party I-employee is justified in raising an industrial dispute to be considered by treating him as a workman within the meaning of the term u/s 2(s) of the Act.

As elaborated in the foregoing paragraphs while considering the above preliminary issue, I shall recapitulate the facts, circumstances and the nature of duties performed by the workman during the course of his employment. The employer McDowell & Company is the manufacturer of liquor for which raw material such as molasses and hops etc., are necessary. So also in view of the nature of the manufacturing activity of the Company it often comes under the supervision and control of many Government Departments including the Excise Dept., and the Industries Department. It is on record that in view of the nature of the industry it was necessary and incumbent upon the management to have a Liaison Officer and the workman was the appointed Liaison Officer and I shall summarily discuss the ups and downs in the service life of this employee who first joined the service of McDowell & Company as a clerk-cum-store keeper on 17-10-70. Obviously the Party I, was an industrial worker when he joined the service attracting the provision of and coming within the ambit of the definition of the 'workman' u/s 2(s) of the Act. However, the nature of duties of Fernando Afonso changed in due course of time when he was promoted as a Liaison Officer and what was the nature of the duties carried out by him as Liaison Officer would be a major factor to be considered while deciding these two preliminary issues. There are certain common points which are admitted by both the parties and I shall presently start with the consideration of the admitted points and then I shall go on scanning the point of difference.

It is an admitted position that Party I, who started the service as a clerk was promoted as a Liaison Officer

and according to the management this is a specialised job and the Liaison Officer had certain earmarked duties and he was supposed to do the work exclusively. Shri Rao for the Party I, hereinafter referred to as Fernando Afonso makes out a case that the Liaison Officer was nothing else but a glorified clerk and he cannot be placed into the category of Officers or high ranking persons doing a particular duty. So the question posed for consideration is whether the said Afonso was working just as a messenger as claimed by Shri Rao or whether he was doing supervisory work and the work of the type which would place him in the category of an officer of the company. While countering this argument Shri G. K. Sardesai for the Company makes out a case that the workman has to prove the nature and type of work and that, if the type of work carried by him fell within the category of a workman. In other words he makes out a case, the position that the management has to lead the evidence to prove the category in which the workman fell is no more a good law and according to him the legal position as it stands now puts the burden on the workman to prove that he fell within the particular category under the definition of the workman u/s 2(s) of the Act and for this proposition he relies on the observations in 1970, LLJ, page 590. On this point regarding the burden of proof I shall have the discussion at a bit later stage and I shall analyse the nature of work and duties carried by Fernando Afonso. It appears from the vehemence with which the management is fighting the case to non-suit Afonso by placing him in the category of an officer and not a workman the management has not left any stone unturned to produce evidence in small details. This being the position I shall have to carefully hold a scrutiny of the evidence to see whether really Shri Afonso admittedly appointed as a Liaison Officer was a person in the category of an officer of the company, a fact over which manifold evidence is led by the management. While appreciating the evidence the life span and history of Fernando Afonso in his association with the company for over 15 years will have to be studied and I shall first study the first point as regards the salary.

Prior to the amendment of 1984 one of the criteria was as regards the salary drawn by the employee, it is on record that even before his promotion as a Liaison Officer Afonso who was working as a Supervisor was drawing the salary of more than Rs. 500/- and in his claim statement itself he states that his initial salary of Rs. 300/- p. m. was revised to Rs. 800/- p. m. from 1-1-81 and from 1-6-81 the salary was revised to Rs. 1025/- p. m. The payslip produced by Afonso himself shows that the gross emoluments drawn by him were Rs. 1625.75 p. m. Thus even after the amendment of 1984 laying down the pay category to Rs. 1600/- p. m. or less, Afonso was drawing a salary of Rs. 1625/- p. m. which places him in the category of officers so far as the salary aspect was concerned. Incidentally along with the salary aspect some other factors are also brought on record. It is an admitted position that after his promotion as a Liaison Officer, Afonso became disentitled to V.D.A. and over time allowances which is

a fact consistent with the theory that he was placed in the category of officers.

Besides this, three more service conditions applicable to Afonso are brought on record. Afonso owned a car which he had probably purchased from the fleet of old cars of the company but he was making use of the car for attending his duties. For this purpose he was given Rs. 150/- p. m. as car maintainance allowance or alternatively the petrol bills were paid by the company. So also he was given an accommodation though un-furnished and the rent of the accommodation was paid by the company for many years. If the car was not used he was entitled to make use of a taxi for office work and he paid for the taxi and if he had used his car the petrol charges were paid by the company. There is evidence at Exb. 6 to indicate this. Exb. E-7 shows that the rent of his accommodation was directly paid to the landlord and all these facts have been admitted by Fernando Afonso. Besides the salary being Rs. 1625/- p. m. it is also brought on record that the electricity and the water bills for the accommodation were paid by the company. As regards his salary the salient feature brought on record is that the salary was not drawn by the company office in Goa, but it was sent by the Head Office and that too very confidential sanction a facility which is available to particular class of employees only.

After giving the above details as regards the salary and rent free accommodation the facts about the nature of his duty are brought on record and the nature of duty can be enumerated as seen from the evidence on record as below :

He was signing correspondence as regards supply and stock statements. He was over all responsible for the store room and he was also a store-keeper. He had five employees who worked under him and he was sanctioning their leave and overtime. He was placing orders with suppliers. About the purpose of designating Fernando Afonso as a Liaison Officer it is brought on record that he had to keep and maintain a close liaison with the Excise Department, Industries Department and also in his capacity as a Liaison Officer he was having contact with controller of import and export for the release of permit for hops and machinery. He was dealing with factory inspection for the alteration of brevery. He was approaching the Commissioner of Excise and was bringing officials for inspection and getting the work done. For the manufacture of alcohol the molasses is a raw material and Afonso was going outside and mainly to Maharashtra to get molasses. He was also going outside Goa for getting rectified spirit from sugar factories in Maharashtra. He was signing correspondence with various departments of Government and was also writing letters to dealers.

After giving this information about the nature of his duties it is brought out by the management on record that Afonso being seniormost, his recommendations were sought for sanctioning leave because he

was third in the hierarchy. It is on record that for the purpose of recommending and sanctioning leave he was next to Chief Executive and Chief Accountant and Exb. 3 is produced to show that orders were placed by him because Chief Executive and Chief Accountant were not there. After giving this information it is claimed on behalf of the management that Afonso was writing many letters to many offices and even approaching the Ministers for getting the work done or sanctioned and all he was doing in his capacity as a Liaison Officer and to throw light on the nature of duties carried out by Afonso the management relies on a personal letter Exb. E-16 written by Afonso to the Personal Manager, Vijay Mallaya, a very important personality in the management of M/s. McDowell & Company which is a multi-national company having branches through out India. It is no doubt true that the Managing Director Vijay Mallaya is an important person in the field of the industry and normally employees of the lower ranking would not have any close contacts with such a high personality in the industry. It is to be noted here that after the enquiry was instituted against Afonso and after the charges were levelled against him he desperately struggled to show how an important person he was in the setup of the industry in Goa and how attempts were being made to victimise him and hence in order to show his importance in the whole setup and what type of work he had done and carried out for the benefit of the industry he seems to have written a letter to Vijay Mallaya which is Exb. E-16 and the letter has it seems become a stumbling block in the line of defence adopted by Afonso to show that he was not that big person as is attempted to show by the management, but he was a small person doing his duty as clerk though a clerk in the category of glorified clerk as claimed by Shri Rao on behalf of Afonso. Extensive submissions are made before me at the bar inviting my attention to the salient features to this letter E-16 which is admittedly written by Afonso to the said Vijay Mallaya on 28-1-1985, when the process of issuing a show cause notice and holding an enquiry against him was in progress. So the facts stated in this letter to an important personality namely the Chairman of the United Breweries Group of which McDowell & Company is a part will have to be studied to understand the nature of duties carried out by Afonso.

In this letter to Vijay Mallaya, Afonso states that the office management had blamed him for keeping export permits issued by the Excise Commissioner with him and thus caused loss to the Company, because the Excise Commissioner was reluctant to issue fresh export permits. While explaining his position in this regard Afonso blames the Accountant Shri S. K. Bandkar who had allegedly given this export permit because the goods could not be despatched before the particular date due to which reason the export permit became useless. Afonso wants to cite this as an attempt of his harassment. While showing how he had diligently worked in the past, he states that he had got the export permit renewed by approaching the Excise Commissioner. After referring to export permits and after

referring to the stages in the departmental enquiry where he was denied normal facilities he writes to the Chairman, Vijay Mallaya about the nature of work carried out by him in the past and this para. practically a concluding para. in his letter seems to have landed him in trouble because the management wants to make a capital out of this para. which was an attempt of Afonso to show to Vijay Mallaya how an important person he was in the hierarchy of M/s. McDowell & Company at Goa.

In this concluding para. he states that while he was a Liaison Officer, he had dealings with top officers at the time of clearing the files to manufacture spirit from mollassis and he got it cleared from the office of the Chief Minister. He then states that the superior officers who were jealous of him had deprived him the opportunity of seeing off Vijay Mallaya, at the Airport because Vijay Mallaya had expressed that he wanted to speak to Afonso at the Airport. After giving this information in the letter Afonso states that this was clearly an attempt to reduce his importance and usefulness and to deteriorate his relation with the Government authorities and Ministers, and this had caused immense humiliation to him. After this he bemoans that this humiliation will cause strain on his personal contacts for effectively completing the company's work in future. He further states that during his service of 15 years he was instrumental in securing the permission of manufacturing of spirit out of mollassis obtained on 17th October, 1984. This is the sum and substance of the impugned letter addressed by Afonso to Vijay Mallaya.

Ordinarily I would not have gone through this type of letter because everybody who is on the dock is bound to get his matter cleared at the hands of the superiors so that the contemplated enquiry is dropped at the initial stage only. So ordinarily much importance would not have been given to this letter to Vijay Mallaya because the question was whether much ado was being done about this letter. However, there are certain other circumstances which are brought on record and I shall study those circumstances along with other circumstances including the salary drawn by Fernando Afonso and facilities which were made available to him such as rent-free accommodation, payment of taxi fare, petrol bills and the payment of bills of water and electricity to his residence. The question is whether such facilities would be made available to an ordinary clerk and whether the duties of Liaison Officer were many fold to place him in the category of an officer and I shall study the nature of his duties with reference to definition of the workman u/s 2(s) of the Act and also with reference to the case law, on this point.

Adverting then to the definition of 'workman' given in Sec. 2(s) of the Act, there is direct authority of the Supreme Court in the case of *Burmah Shell* reported in 1970 LLJ. Vol. II page 590. This *Burmah Shell* case is a digest of earlier Supreme Court cases and so far as the *Burmah Shell* Company is concerned their Lordships of the Supreme Court were considering the

different categories of Engineers employed by the *Burmah Shell* Company whose duties were supervisory in nature and also technical because at times these Engineers had to test the vehicles which were given to them for examination. So the question posed for consideration was whether these Engineers could be placed under a particular category and whether they were skilled workers doing a particular category of work and before dealing with that case I shall presently study the definition of the workman given in Sec. 2(s) of the Act because this definition is studied in detail by the Supreme Court in the above ruling.

As per the definition amended as per the change in law effected by the Amendment Act of 1956, originally the 'workman' meant "any person employed in any industry to any skilled or unskilled manual work, or clerical work" and adding two more categories doing supervisory work and technical work. So after the amendment of 1956 it was manifested that the employee must be employed to do the work of the four categories and those who are excepted or those who are out of the categories were not to be deemed as workmen and the definition also gives the persons who are excepted which includes employees who are employed mainly in managerial and administrative capacity or those being employed in a supervisory capacity and drawing wages exceeding Rs. 500/-, now as per the amendment this limit is raised to Rs. 1600/- p. m. Now with this comprehensive definition of the employee we shall see what the Supreme Court has to say on this point. While analysing the position the Supreme Court went on to observe that if every employee of an industry was to be in the four exceptions, these four classification need not have been mentioned in the definition and a workman could have been defined as a person employed in an industry except in cases where he was covered by one of the exceptions. According to the Supreme Court the specification of the four types of work is obviously intended to lay down that an employee is to become a workman only if he is employed to do work of one of those types, while there may be employees who not doing any such work, would be out of the scope of the word 'workman' without having to resort to the exceptions. While explaining this position their Lordships of the Supreme Court gave the example of a person employed in canvassing sale for an industry. He may not be required to do any paper work, nor may be required to have any technical knowledge. He may not be supervising the work of any other employees nor would be doing any skilled or unskilled manual work. He would still be an employee of the industry and, obviously, such an employee would not be a 'workman' because the work for which he is employed is not covered by the four types mentioned in the definition and not because he would be taken out of the definition under one of the exceptions. The type of work carried out by Party I, Fernando Afonso as a Liaison Officer is comparable with the work of a person canvassing sales of a company because what the Liaison Officer does is having a rapport between the company and the different offices with which the company has got its work. In the instant case, on the showing

of the workman himself he was approaching different offices including the Excise Department, Industries Department for getting licences, permits etc., and this was necessary and essential for the company which was manufacturing the liquor. The above Burmah Shell case was in respect of different Engineers who had formed an Association who were placed into different categories and besides the range of salary they were drawing, of more than Rs. 500/- p. m. the nature of work was also taken into consideration. In the case of Transport Engineers it was pointed to the court that the Engineer uses his technical knowledge and the knowledge is used primarily for the purpose of supervising the work done by the skilled manual labourers who carry out the actual repairs, do the servicing or maintenance or complete the fabrication. According to the Court these appear to be no grounds for holding that the main and substantial work being done by the Transport Engineer is not supervisory in character. The work of giving advice and guidance cannot be held to be an employment to do technical work. The Supreme Court have considered the earlier cases also in this regard while considering the definition of 'workman' and the four categories and exceptions to them. According to the Supreme Court even if a person is employed mainly in a supervisory capacity in view of the technical knowledge or qualifications possessed by him, such an employee cannot be a workman if he draws a salary of Rs. 500/- (now Rs. 1600/- p. m.). By applying this test their Lordships of the Supreme Court held that some employees were covered by the definition and some categories were not covered in Sec. 2(s) of the Act. I am considering the above authority of the Supreme Court for a limited purpose only to find out the nature of work and duties carried out by Party I/Fernando Afonso. Shri Rao for Party I, did submit before me and considering the nature of his duties he was to be at the most called a 'glorified clerk' and all the same he is a workman within the meaning of Sec. 2(s) of the Act. I feel that considering the nature of work and the detail discussion in the foregoing paragraphs the Liaison Officer cannot be placed in the category of a workman within the four categories of the definition given under Sec. 2(s) of the Act but he falls within the exception of the four categories and he cannot be said to be a workman within the meaning of the definition. The two issues are being treated by me as preliminary issues and in view of the elaborated discussion in the foregoing paragraphs I am inclined to hold that the employer has proved that the Party I, was performing the supervisory, administrative and managerial functions drawing more than Rs. 1600/- p. m. by way of wages and consequently the action of the management in terminating the services of Party I, is outside the purview of the jurisdiction of this Court as Party I, is not a 'workman' as defined u/s 2(s) of the Industrial Disputes Act. Consequently the main Government reference cannot be answered by this Tribunal in view of the findings on the above issues. In the result, I pass the following order :

ORDER

It is hereby held that the Party II/Employer M/s. McDowell & Company Limited, Ponda, Goa, has pro-

ved that the Party I, Shri Fernando Afonso was performing supervisory, administrative and managerial functions drawing more than Rs. 1600/- p. m. by way of wages and consequently the action of the management in terminating his services is outside the purview of the jurisdiction of this Court as Party I, Fernando Afonso is not a workman as defined under Sec. 2(s) of the Industrial Disputes Act. This Tribunal is therefore unable to record a finding whether the action of the management of M/s. Mc Dowell & Company Limited, in dismissing him from service is just, legal or otherwise. The Party I, is free to take appropriate action and steps according to law.

Inform the Government accordingly, about the passing of the award.

S. V. Nevagi
Presiding Officer
Industrial Tribunal.

Order

No. 28/3/85-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.
Subhash V. Elekar, Under Secretary (Labour).
Panaji, 19th April, 1990.

**IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI**

(Before Shri S. V. Nevagi, Hon'ble Presiding Officer)

Ref. No. IT/14/85

Shri Ratnakar Gauthankar — Workman/Party I
V/s

M/s. Janata Consumers Co-op. — Employer/Party II
Society Ltd.,

Workman represented by Adv. A. Nigalye.

Employer represented by Adv. P. J. Kamat.

Panaji. Dated : 12-3-90.

AWARD

This is a reference made by the Govt. of Goa, by its order No. 28/3/85-ILD dated 19th April, 1985 with an annexure scheduled thereto which reads as follows :

"Whether the action of M/s. Janata Co-operative Society Limited, Panaji, Goa, in refusing the employment to Shri Ratnakar, the Secretary, with effect from 1-4-1983 is legal and justified ?

If not, to what relief the workman is entitled to?"

From the above Government reference it can be pertinently noted that the grievance of the workman who was working with the Janata Co-op. Society, Panaji,

Goa, is that he was refused employment w.e.f. 1-4-1983 and what this Tribunal has now to see is whether this action in refusing employment by the management of the Society is just and legal in the circumstances of the case. The converse of this is whether the workman was really refused employment on 1-4-83 as adumbrated by him or whether he had left the work without permission prior to that and whether the management of the Society was constrained to take adequate action against the workman. The reference to the pleading will make the position quite clear.

In his statement of claim dated 12-7-85 the workman who was working as a Salesman in the Fair Price Shop of the Society makes out a case that his long service was clear and there was devotion of duty and in December, 1982 he was working at Shop No. 9 at the St. Inez, Panaji branch of the Employer/Society. According to him he fell seriously ill in Jan., '83 and could not attend his duties. He sent an application for leave on 4-1-83 stating that he would rejoin the duties as early as possible after he recovered from the illness. So the workman was said to be ill and he recovered on 1-4-83 and presented himself before the Chairman with a medical certificate and the Chairman refused to accept the certificate and instructed the workman to send the certificate by post and the workman would be informed in due course about the decision taken in the Executive Committee Meeting. Since 1-4-83 the workman was waiting for a reply but no reply was received and so he took up the matter to the Labour Commissioner and the conciliation proceedings were held before him. In the conciliation proceedings the management had taken a stand that it had not refused to give employment to the workman. Thereafter a letter dated 24th August, 1983 was issued to the workman informing him that the charge-sheet was issued to him and the Inquiry Officer had held the workman guilty of the charges and acting on the report of the I. O. the management had dismissed him from service with immediate effect from 24th August, 1983. The workman makes out a case that no such enquiry was held nor a charge sheet was issued to him. Before the Asst. Labour Commissioner, before whom the conciliation proceedings were held the employer-Society had made out a case that in the General Body Meeting dated 15-1-84 an unanimous decision was taken to terminate the services of the workman in view of the alleged mis-appropriation of funds. The workman after giving this information makes out a case that he was refused employment on 1-4-83 and the so called action of the management is unjust and improper and he claims that he be reinstated into services w.e.f. 1-4-83 together with full back wages and other benefits. This is the sum and substance of the statement made by the workman.

In the written Statement dated 14-8-85 the Society has revealed certain facts throwing light on the circumstances under which the workman left the job without following proper procedure while the workman was in fact incharge of Shop No. 9 in St. Inez run by the Society. According to the employer the workman was not only a Salesman but he was a Secretary of the

Shop and he was responsible for the day to day working of all shops of the Society though he was made to sit in Shop No. 9. The workman, Party I was also responsible for writing of such other accounts books of the Society as are required to be maintained under the Society Act. About the events in December, 1982 it is stated in para. 4 that on 13-12-82 and 14-12-82 the workman, Salesman suddenly remained absent without leave though he was holding the keys of the shop and the closure of the shop for two days caused considerable inconvenience to the consumers who were unable to lift their ration quota for the first fortnight ending on 15-12-82. Due to the sudden absence of the workman the managing committee suspected some foul play and some irregularities and the Asstt. Registrar of the Co-op. Society was approached for physical verification of the stock. So on 17-12-82 the physical verification of the stock of shop No. 9 where Party I was working as a Secretary was taken by the officials of the Asstt. Registrar in presence of the Chairman, Vice Chairman and other office bearers of the Society including the workman himself, and weighman. After the verification statement duly signed by the Secretary and others was received the Asstt. Registrar was requested to hold an audit of the shop and the audit for the period from 1-7-82 to 17-12-82 was to be done and the workman was therefore asked to hand over the charge to another employee by name Prabhakar Sakalker on 17-12-82 itself. The formalities of handing over and taking over the charge was complete and it was found in the Audit that as on 17-12-82 the workman was holding a cash in hand of Rs. 6791/-. The workman in fact ought to have deposited this cash in bank. He neither deposited the case nor he returned the money to the Society and virtually this was an act of mis-appropriation of the funds of the Society. The Society received communication from Asstt. Registrar on 30-12-82 stating that the office would conduct the audit from 5-1-83 and all accounts books duly completed be presented in the office. It is the positive statement of the Society that the workman came to know about this letter of the Asstt. Registrar of the proposed audit and he did not report for duty from 31-12-82 onwards. Thereafter a show cause notice was issued to the workman on or about 15-1-83 on his last known address. The workman did not accept the registered postal article which was returned by the post office with a remark 'Un-claimed' 'return to sender'. So on 16-2-83 a charge sheet was issued to the worker and the same was published in the local daily 'Gomantak' in the issue dated 17-2-83. As per the publication the enquiry was started for hearing on 22-2-83. The workman remained absent and the enquiry was adjourned to 3-3-83 to give another opportunity to the workman to remain present for the enquiry. On 22-2-83 the copy of the enquiry proceedings and the show cause notice were sent to the workman by registered post as directed by the Inquiry Officer. The registered letter was sent on the known address of the worker and the letter bounced back on 5-3-83 with a postal remark 'addressee absent'. The enquiry was adjourned to 14-3-83 and a notice was published in daily Gomantak dated 4-3-83 for the information of Party I. In spite of the publication the

Party I/Workman remained absent on 14-3-83 and the enquiry was held and conducted ex-parte. Thereafter by his letter dated 31-3-83 the I. O. sent his report holding that the workman was guilty of the charge of mis-conduct as shown in the charge-sheet dated 16-2-83. Thereafter a letter was written to the workman on 17-6-83 informing him about his un-authorised absence and asking him to appear to answer the queries that may be raised by the auditors. The said letter was received by one Vishnu Priolkar on behalf of the workman. This is how without appearing in the Society for the proposed audit the workman made out a case of industrial dispute by approaching the Labour Commissioner and the Society informed the Asstt. Labour Commissioner who was holding the enquiry that the workman had absented from duty from 31-12-82 and he remained absent because the audit was to take place on 5-1-83 onwards. In the audit the auditors detected many irregularities in the maintenance of records, stocks etc., of the Society. The auditors had remarked that the worker had caused shortages to the tune of Rs. 13,246/- and that these dues should be recovered from the workman besides the cash of Rs. 1667.91 which the workman was holding on 19-12-82. Thereafter the workman tried to make out a case that he was sick during the intervening period and that he had approached the society with a medical certificate. The Society claims that this is a myth and the workman who was guilty of mis-appropriation had abandoned the services to avoid facing the consequences and they say that the workman was not refused the service but he was dismissed from services at the end of an enquiry, the proceedings of which were held according to law.

To this written statement the workman filed his rejoinder on 28-8-85 denying the statements made in the W. S. and the management of Party II filed second rejoinder on 26th August, 1985.

After going through the above pleadings my predecessor held on 30-9-85 that no other issues besides those involved in the order of reference are necessary. So what this Tribunal has now to see is whether the management of Janata Co-op. Society, Panaji, Goa had really refused employment to the workman and if that be so, the question would be whether this refusing of the employment is just and legal. However, there is the other point namely the termination of the services of the workman at the end of a domestic enquiry and from the beginning the Society has been making out a positive case that after revelation of the mis-appropriation the Society had taken a decision to issue a charge sheet to the workman and the charge sheet was issued to the workman, but the workman did not accept the charge sheet sent to him by registered post. So the charge sheet was issued to the workman was published in the daily Gomantak on 17-2-83 and the workman was informed by the public notice that the enquiry was fixed and would be held against him on 22-2-83. Thereafter the workman did not participate in the enquiry and a fresh notice was published in the daily issue of Gomantak on 4-3-83 and the date of enquiry was fixed on 14-3-83. The workman did not

appear for the enquiry on that day and obviously ex-parte decision was taken against the workman by holding that the charge of mis-appropriation or mal-practices was duly proved against the workman. So in order to counter the case of the workman that employment was refused to him the Society has made out a positive case that the workman was issued with a charge sheet, the workman was informed by public notice about the proposed enquiry to be conducted against him and the I. O. had made a report against the workman on 31-3-83. So the Society has made out a case by positively asserting that the workman was charge sheeted for a clear charge of mis-appropriation he was given full opportunity to defend himself but the workman did not avail himself of the opportunity and he continued to remain absent and consequently the I. O. filed his report on 31-3-83 and the workman was held guilty of the charges and acting on the charges the management resolved to dismiss the workman from the services. So this is a clear and direct rejoinder to the case of the workman that he reported for duty on 1-4-83 but the Chairman refused to allow him to join the duties. So the question is whether the I. O. had really made a report against the workman on 31-3-83 and in view of this whether the workman is making out an imaginary case that he presented himself for duty on 1-4-83. I feel that the whole thing rest on the deposition of the workman and I shall go through his oral testimony which is recorded before me at stages and his evidence alone would be sufficient to come to a conclusion whether this is really a case of refusal of employment or whether this is a case of dismissal from services at the end of a proper domestic enquiry after duly issuing a proper charge sheet.

In his examination in chief recorded on 5th May, 1988 the workman states that the Committee of the Society took charge of the shop from him on 17-12-82. Thereafter he was asked to do other duties such as writing of accounts of the other two branches. The crucial date is 1st Jan., 1983. The workman did not go for work up to 4th Jan., but sent an application through his brother on 4th January, 1983. Thereafter he continued to remain ill till 1st April, 1983 and he offered to join duties on 1-4-83 when the Chairman refused to accept him into service. He then took the matter to the Labour Commissioner and while the matter was pending before the Labour Commissioner his services were terminated by a letter w.e.f. 24-8-83. This is the sum and substance of his statement in examination in chief. What he admits in cross examination is important. He admits that he had made entries in the cash register and stock register till 17-12-82 when he went on leave. He stated that he was on duty on 13-12-82 and 14-12-82 at Shop No. 7. He changed his story and stated that he had gone to Belgaum because his child was sick. He admits that the keys of the shop were with him and he did not hand them over to anybody. He admits that the shop remained closed for two days due to his absenteeism. He then admits that on 17-12-82 the physical verification of the stock in shop No. 9 was taken by the Cooperative department and two statements were prepared and he admits the statement Exb.

E-3 on which he has signed. He was then issued a memo and asked to hand over the charge to Prabhakar Sakalkar. He admits that on 17-12-82 there was some cash in hand but does not remember the sum. He on his own way tries to account for the disbursement of the cash in hand by admitting that he did not deposit the amount in the bank. According to him he paid Rs. 120/- as rent to the landlord of the shop, Rs. 270/- as advance pay to the weighman, Kambli and he kept the amount of Rs. 1690/- as his unpaid salary which was recommended by the Labour Commissioner in the statement. These replies clearly go to show that the workman has attempted to account for the amount which he had unauthorisedly retained with him on 17-12-82 the day on which the physical verification of the stock was taken. His statement that when subsequent conciliation started before the Labour Commissioner he appropriated the amount of Rs. 1690/- towards his past salary is anything but satisfactory. This is how on the showing of the workman himself there were charges of serious lapses on his part in writing improper accounts and not accounting for the cash as well as the stock in the shop of which he was the head.

The question then is whether he was really denied the job on 1-4-83 as adumbrated by him. His own admissions do go to belie him in this respect. He admits that he was absent between 31-12-82 to 3-1-83 but no application was sent. He says that he sent one application through his brother on 4-1-83 and the management straight away denies this suggestion. The workman has attempted to prove the so called o. c. of this application Exb. W-1 dated 4-1-83 but there is nothing on this copy to show that the original was presented on 4-1-85. This goes to show that desperate attempt is being made by the workman to account for his unauthorised absence from 31-12-82, the crucial day on which the office of the Asstt. Registrar of Co-op. Societies was to hold a scrutiny of the stock and account in the shop. He states that he knew on 3-12-82 itself that the Auditors were to visit the shop but he remained absent on his own admission deliberately because he wanted to correct the books of account. He admits that on 17-6-83 the Society's Chairman wrote him a letter Exb. E-4 asking him to go to the Audit office and complete the audit. He did not go to the audit office but went to the Chairman and asked for a written order permitting him to resume duty which was quite correctly refused by the Chairman. With this, it is suggested to him that even after 1st April, 1983 he did not resume duties and then he is confronted with the stock register and the audit report etc., and his admissions on pages 8, 9 and 10 of the cross examination are self-eloquent and the sum and substance of the same is that the workman very well knew about the audit report and his failure to deposit the money in the bank. When confronted with the pass book Exb. E-10 he admits that he deposited Rs. 6120/- into the bank and thereafter no deposits are made by him up to 15-12-82. It is to be noted pertinently that on 15-12-82 he deposited Rs. 9820/- into the bank but the full cash was not deposited by him because he had to make accounts for four days. So knowingly he had retained

the amount of more than Rs. 1600/- for which he was prosecuted in a criminal court. The physical verification of stock report of shop no. 9 Exb. E-3 dated 17-12-82 goes to show that along with the cash in hand there was shortage of commodities for which the Society took the necessary action, issued him with a charge sheet, published the same in the newspaper because the workman refused to accept the regd. letter sent on his known address.

There is then the evidence of the I. O. Adv. A. A. Jog who has clearly stated long back on 3-3-86 that the notice of enquiry was published in the newspaper and the workman did not attend the enquiry inspite of two public notices and so he made his report to the management and the decision was taken by the management to terminate the services of the workman. With these facts and evidence on record it has now to be seen whether the present Govt. reference is based on correct facts on record. It appears that in the conciliation proceedings the workman had suppressed the facts that the charge sheets were issued to him and the departmental enquiry was conducted behind his back due to his failure to participate in the same. On the contrary he made out a case before the Conciliation Officer that he appeared before the management on 1st April, 1983 with an application supported by a medical certificate and the management refused him the employment. This seems to be case of an after thought because before that, much water has flown below the bridge. Atleast two registered notices were sent to him on his known address out of which the first notice was refused by him as per the postal endorsement on it and the second notice was received by the relation probably brother-in-law by name Priolkar but still the workman admittedly did not attempt to meet anybody from the management to show his willingness to rejoin the service. There are also two public notices issued in the daily Gomantak and it has to be presumed that the workman came to know about the notices published in the newspapers and yet he remained silent for obvious reasons. Hence it can be reasonably inferred that the workman was conscious about the audit taken on or after 3-1-83. The shortage of the money and the stock and the verification of the stock shows that the total stock valued at Rs. 13,246/- was found besides the workman's failure to account for the cash in hand to the tune of Rs. 1667.91 as on 17-12-82. The management came to a conclusion that there was a case of fraud and mis-appropriation and two simultaneous actions were taken against the workman namely filing the criminal case and issuing a charge sheet to the workman. I do not want to say anything about the shortage and the so called mis-appropriation because the matter is subjudiced in the criminal court. Suffice it to note that the management had taken cognizance of the shortages, had issued charge sheet to the workman and in due course had conducted departmental enquiry against the workman and the workman did not participate in the departmental enquiry deliberately. When this is the position how can there be a question of the management refusing employment to the workman on 1-4-83? So it appears that the workman in the

conciliation proceedings did not inform the concerned authorities about the correct facts on record and he reiterated the fact that the management refused him employment on 1-4-83 while the real state of affairs was suppressed during the conciliation proceedings. Anyway the learned Conciliation Officer came to a conclusion that this was a case of refusal of employment and he made a failure report to the Government accordingly and the Government made this reference to this court dated 19th April, 1985 requiring this court to find out whether the action of the Society in refusing employment to the workman, Ratnakar Gauthankar w.e.f. 1-4-83 is legal and justified. Upon a careful reappraisal of the facts and evidence on record, I have come to a conclusion that the date 1-4-83 is an imaginary date and nothing had happened on that day. On the contrary there is reason to believe that the Domestic enquiry was completed by Shri Jog by 31-3-83 and he had submitted report to the management and the workman getting scent of the same made out a case that he appeared before the management to rejoin the services on 1-4-83 and the management refused the employment to him. This is not the position as stated by the workman but the position is quite the contrary. This is a case where a Departmental enquiry was conducted against the workman by issuing a charge sheet and by issuing public notices in the newspapers addressed to the workman. The workman did not participate in the departmental enquiry and the management accepting the report of the I. O. came to a conclusion that the workman was guilty of the acts of dereliction of duty indiscipline and mal-practice and on this count the services of the workman were terminated at the end of a valid enquiry. In the Government reference the question whether the enquiry conducted against the workman though ex-parte is valid or not is not raised at all. The Government reference is not on that point. If the workman wanted to get some relief in a reference u/s 10 (1) (d) of the Industrial Disputes Act, he ought to have asked for a reference to make out a case that the termination of his services based on the findings of the enquiry officer was illegal and unjust and that he was not given any opportunity to put forth his case in the Departmental enquiry. The workman has not made out a case of this type but on the contrary he has made out altogether a new case to state that the management refused employment to him on 1-4-83 and that this action of the management is neither legal nor justified. Upon a careful consideration of the facts and evidence on record this Tribunal has to see whether any injustice is caused to the workman and whether he was prevented from lawfully joining his duties on 1-4-83. This is a Court of equity and those who come to the court of equity must come with clean hands. It is manifest from the evidence on record that the workman has not come to the court with clean hands but on the contrary he had suppressed many things and facts initially in the conciliation proceedings and subsequently in the court proceedings. The workman had to give admissions regarding the charges of mal-practices and mis-appropriation in replies to questions in cross examination and allegations are made by the management not for the sake of

allegations but the case of the management is substantiated by the record produced by them which includes physical verification of stock Exb. E-3, notice Exb. E-4 and evidence of the I. O. Adv. A. A. Jog whose evidence was recorded before my Predecessor long before the evidence of the workman recorded before me in the case. I find that the entire approach to the case is basically erroneous and the workman is responsible for the wrong Government reference calling upon this Tribunal to see whether the management had refused employment to the workman really on 1-4-83. I find that the position is otherwise and this is a case of termination of services and the termination is based on the report of the I. O. and all formalities as regards departmental enquiry are stated to be followed after issuing a charge sheet to the workman. As per the Govt. reference this Tribunal is not called upon to see whether the order of termination is proper or not. But the reference is simply about the so called refusal of the employment and I find that the employment was not refused to the workman and the workman has failed to prove his case on this point. My predecessor by his order dated 30-9-85 has already held that besides the Government reference no other issue is involved in the matter and I record my finding on the issue in the negative holding that the workman has failed to prove his case on this point. In the result I pass the following order :

ORDER

It is hereby held that the management of M/s. Janata Co-operative Society Limited, Panaji, Goa, had not refused employment to the Secretary Shri Ratnakar Gauthankar w.e.f. 1-4-83 and as such there is no question of holding whether the refusal of employment is just, legal or otherwise. Consequently the workman is not entitled to any relief in this Government reference.

There shall be no order as to costs. Inform the Government accordingly about the passing of the award.

S. V. Nevagi
Presiding Officer
Industrial Tribunal.

Order

No. 28/15/89-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947)

By order and in the name of the Governor of Goa

L. J. Menezes Pais, Under Secretary (Labour).

Panaji, 24th May, 1990.

**IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI**

(Before Shri S.V. Nevagi, Hon'ble Presiding Officer)

Ref. No. IT/28/89

Shri Ashok Namshekar — Workman/Party I
V/s
M/s. American Stores — Employer/Party II
Workman represented by Shri Subhas Naik.
Employer represented by Adv. B. G. Kamat.

Panaji. Dated: 3-5-90.

AWARD

This is a reference made by the Government of Goa by its order No. 28/15/89-ILD dated 12-4-89 with an annexure scheduled thereto which reads as follows:

"Whether the action of the management of M/s. American Stores, Margao, in terminating the services of Shri Ashok N. Namshekar, Salesman, with effect from 15-12-1988 is legal and justified?"

If not, to what relief the workman is entitled?"

As per the above Govt. reference this tribunal was to consider whether the termination of the workman from service is proper or not. However after the claim statement by the workman was filed and after the management had filed the written statement and after I framed the issues at Exb. 4 on 4-12-89 the parties have settled the matter.

Today the settlement is presented before me and I have read and recorded the settlement. I, therefore, pass the following award in terms of the settlement.

ORDER

The workman having given up his claim for reinstatement arising out of the termination, it is hereby held that the action of the management of M/s. American Stores, Margao, in terminating the services of the Salesman Ashok Namshekar is just and proper in the circumstances of the case.

By way of relief the management of Party II shall pay an amount of Rs. 2500/- (Rupees two thousand and five hundred only) to the workman Ashok Namshekar as compensation in full satisfaction of all his claim arising out of his termination.

There shall be no order as to costs. Inform the Govt. accordingly about the passing of the award.

S. V. Nevagi,
Presiding Officer
Industrial Tribunal.

Order

No. 28/63/88-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as

required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa,
Subhash V. Elekar, Under Secretary (Labour).

Panaji, 21st December, 1989.

**IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI**

(Before Shri S.V. Nevagi, Hon'ble Presiding Officer)

Ref. No. IT/7/89

Shri Costa Almeida — Workman
V/s
M/s. Samant Marine Udyog — Employer

Panaji. Dated : 29-11-89.

AWARD

This is a reference made by the Govt. of Goa, by its order No. 28/63/88-ILD dated 11th January, 1989 with an annexure scheduled thereto which reads as follows:

"Whether the action of the management of M/s. Samant Marine Udyog, Vasco da Gama, in terminating the services of Shri Costa Almeida, Helper, with effect from 3-3-1987, is legal and justified?"

If not, what relief the workman is entitled to?"

From the above Govt. reference it appears that the workman claimed that he was illegally terminated from service from 3-3-87 onwards and at his instance the industrial dispute was raised and the Government was constrained to make a reference as contemplated u/s 10(1)(d) of the I.D.A. In view of this, the workman should have evinced keen interest in the matter of termination of his service.

However, the record shows that the workman was not interested in the matter and from the beginning he had adopted evasive and dilatory tactics. The first notice sent to him returned on 22-2-89 with postal endorsement 'intimated' meaning the workman was informed. The employer appeared and took time and matter was adjourned to 16-3-89 on which day the workman appeared and took time to file claim statement. On the adjourned day viz. 22-4-89 the workman was absent and at my instance one more notice was issued to him with a specific direction that if he fails to remain present the matter would be heard in his absence. On the next day viz. 25-5-89 Adv. M. M. Adarkar appeared and took time for the workman and matter was adjourned to 13-7-89 on which day the workman or his advocate remained absent. Thereafter the matter was consequently adjourned to 17-8-89, 11-9-89, 3-10-89 and lastly the workman having remained absent today the evidence of the employer Subhas Samant was recorded. Before that the employer have filed written statement Exb. 2 on 11-9-89.

The evidence of the employer shows that on the impugned day of 3rd March, 1987 the workman volunta-

rily offered to tender his resignation by accepting the compensation that was offered to him. The statement of account Exb. 5 (E) of the identical day bearing the signature of the workman of the same day shows that accounting was done and the total dues to the workman were worked out at Rs. 8480.41. The account of dues from the workman was worked out as Rs. 1787/- and an amount of Rs. 6693.41 was found due to the workman and this amount was paid to the workman by a cheque drawn on the Vasco branch of the Mapusa Urban Co-operative Bank and the employer's witness S. Samant states that the workman encashed the cheque and took the money. So by and large this seems to be a case of voluntary abandonment of service after taking adequate retrenchment compensation. If the workman had anything to urge in the matter he would have appeared in the court to justify his claim. He has not done so even after sufficient opportunity was given to him and even after his legal advisor had attended the court once or twice. So upon a careful consideration of the facts and circumstances I have come to a conclusion that the termination, if any, is just and fair and the same does not call for any interference. No issues are framed besides the Govt. reference as the workman has not filed his claim statement to set forth his claim. In the result, I pass the following order :

ORDER

It is hereby held that the action of the management of M/s. Samant Marine Udyog, Vasco da Gama, Goa, in terminating the services of Shri Costa Almeida, Helper w.e.f. 3-3-87 is just and legal in the circumstances of the case and the same does not call for any interference. Consequently, the workman is not entitled to any relief in this Govt. reference.

Inform the Govt. accordingly. There shall be no order as to costs.

S. V. Nevagi
Presiding Officer
Industrial Tribunal.

Order

No. 28/17/85-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Under Secretary (Labour).

Panaji, 19th April, 1990.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri S.V. Nevagi, Hon'ble Presiding Officer)

Ref. No. IT/16/85

Smt. Sharada Bassappa Pujari — Workman
V/s

M/s. Industrial Nacional de Telhas — Employer
Workman represented by Adv. A. Nigalye.

Employer represented by Adv. G. K. Sardessai.

Panaji. Dated : 3-4-90.

AWARD

This is a reference made by the Government of Goa, by its order No. 28/17/85-ILD dated 23rd April, 1985 with an annexure scheduled thereto which reads as follows :

"Whether the action of the employer, M/s. Industrial Nacional de Telhas, Sanvordem-Goa in terminating the services of Smt. Sharada Bassappa Pujari, Labourer, w.e.f. 1-9-1984 is legal and justified.

If not, to what relief the workman is entitled to?"

The above Government reference would show that this is a simple matter of the termination of the services of a labourer by the management of Industrial Nacional de Telhas w.e.f. 1-9-84. This is the information which we got from the Govt. reference received in this office on 3-5-85 the only question being whether the termination of the services of the workman was legal and justified in the circumstances of the case. The facts coming on record subsequent to the registration of the case and the filing of the statements by the parties do go to show that the position was otherwise and it is not just a case of termination simpliciter.

From the claim statement of the workman whose maiden name is Sharada B. Pujari and who had joined the service while she was unmarried shows that she continued with the service even after her marriage, it being not clear when she first joined her services and when she was married. Precisely, these facts are not much relevant for consideration so far as this Govt. reference is concerned but the facts which are relevant are the period between Jan., '84 till the termination on 1-9-84. As stated in para. 4 of the W. S. the workman who had by now married became pregnant sometime in 1983 and she delivered a child on 16-1-84. She had proceeded on maternity leave but after delivery she rejoined the duties and after some days again she remained absent from duty from 1-4-84. According to her the duties given to her entailed physical labour and she was unable to perform the duties on account of sickness. The workman claims that she and her husband had appraised the employer of her sickness though orally. The break point came on 1-9-84, the day on which the workman went to the office of the employer along with her husband after a gap of about 5 months. The workman then tendered her resignation. The letter of resignation was typed in the office by some clerk and she put her thumb impression on her resignation application in front of her husband and others. After signing the letter of resignation in this way she and her husband went away. Later on the workman showed the copy of the letter of resignation to the Vice-President of All Goa General Employees Union by name Dr. Mrs. Luisa Pereira and Pereira told her that the said letter was not an application for leave but it was a letter of resignation which was made retrospective in effect from 1-4-84. She therefore felt that she was cheated in the whole process and she wrote a letter on 5th Sept., 1984 in which she retracted the so called resignation. With this information she

maintains that the termination of her services is illegal and unjustified and the same is effected without any reasonable cause or without any misconduct committed by her. She therefore makes out a positive case that the letter does not have any legal effect and that it is not binding on her because the resignation is obtained by misrepresentation and fraud. According to her she has been cheated in the entire process because the management got the letter drafted and made her put her L. T. M. She therefore raised the industrial dispute and after the failure of the conciliation proceedings the Government made the above reference wherein it is stated that this is a case of termination simpliciter and there is no reference to the so called resignation tendered by the workman.

In reply to the claim statement the management of Party, II in its written statement dated 26-7-85 claims that the workman joined their services as a labourer in the factory of manufacturing of roofing and flooring tiles on 27-10-75. The workman absented herself from duties from 2-4-84 and a show cause notice dated 10-5-84 was issued to her, calling upon her to explain her absence from duties from 2-4-84 to 10-5-84. According to the management this absenteeism amounted to a major misconduct. The workman received the letter of show cause notice but she did not sent any reply. The workman as a part of her service condition was residing in the company quarters for residential purposes so far as she continued in valid service. The management further states that the workman and her husband approached the Manager, Ashok Naik on 1st Sept., 1984 and the workman made out two things namely that she was going to resign from the services and secondly she gave an undertaking to vacate the premises soon after the resignation of her services. Thereafter the impugned letter of resignation was typed in her presence the contents were explained to her in Konkani and the Manager, A. Naik and the typist Ms. R. Sanvordekar took her thumb impression on the letter of resignation. Not only this but the husband of the workman also signed on this letter. After giving this information the management states that the matter as regards the service of the workman was over the moment the resignation was tendered and what remained to be discussed was the quarters which the workman was occupying, thereafter. The management admits in para. 5 that the letter retracting the resignation was received by them on 6th Sept., 1984 but was maintaining that the workman had signed the letter of resignation with full knowledge and contents of the letter which were explained to her and her husband in konkani in presence of the witness Miss R. Sanvordekar. The management wrote to the workman on 21-12-84 informing her that she could not be reinstated into service as she had tendered the resignation. According to the management the workman is interested more in the quarters which she has been occupying illegally than the reinstatement into service.

The workman has filed the rejoinder reiterating the same facts on 23-8-85. With the contentions as above my Predecessor Dr. Noronha framed the following

issue on 20-9-85 which was obviously the preliminary issue.

"Whether the workman proves that the purported letter of resignation was obtained from her by the employer by misrepresentation and fraud and so it has no legal effect; That is also violates the Model Standing Orders, being retrospective in effect?"

So the hearing took place so far as the preliminary issue is concerned and obviously the burden is cast heavily on the workman to prove that the purported letter of resignation was obtained by misrepresentation and by practicing fraud on her. During the course of the trial before my Predecessor the evidence recorded on behalf of the employer was that the manager Ashok Naik whose examination started before him on 31-1-89 and cross examination completed on 2-3-89. Before that the evidence of the workman Sharada Bassappa Pujari was recorded before my Predecessor on 21-2-86 and the examination was adjourned to 10-3-86. After going through the roznama I find that the hearing did not take place on 10-3-86 or the adjourned date of 12-5-86. Thereafter the matter went on sine die list due to the superannuation of Dr. Noronha and the matter came up before me in December, 1987 and the workman took a lot of time to appear in the Court and finally her remaining examination in chief and cross examination was completed before me on 10-5-88. With her evidence she closed her evidence and no other evidence is led by her in support of her claim that the resignation was obtained by misrepresentation and fraud. In view of this her cross examination will have to be studied minutely to see whether the burden of proof is really discharged by her.

In cross examination she states that she does not remember if the clerk by name R. Sanvordekar was present when her thumb mark was taken. According to her besides the Manager the Driver was present and she was accompanied by her husband. She states that she had taken her husband with her because the employer had told her that she has to sign on some paper and rejoin the duty from next day. According to her she was supposed to rejoin the duty next day. However, the meeting with the trade union leader revealed to her that this was the letter of resignation. She had not reported for work after 1-9-84. With this it is suggested to her that before she put the thumb mark on the letter the contents were translated to her in Konkani. It is suggested to her that the union leader Luisa Pereira told her for the first time that she had committed a mistake by tendering the resignation and so she had made out a case of the resignation obtained by force. She admits that since 1-9-84 she has not worked anywhere else. It is suggested to her that she did not rejoin anywhere else because she had the fear of losing the quarters. It is suggested to her that she is pursuing the present matter because she wants to continue with the accommodation. This is the sum and substance of her evidence and I shall advert to the evidence of the Manager Ashok Naik who explains the circumstances under which the workman remained absent from 2-4-84

and how a show cause notice was issued to her on 10-5-84. According to him the workman received the notice but she did not send any reply within two days as stipulated in the notice. He further states that even thereafter repeated messages were being sent to her because she was residing in the quarters outside the factory. The workman did not resume duties inspite of the messages and lastly she came on 1-9-84 along with her husband and expressed to him that due to ill health she was unable to continue with the job and that she wanted to resign the job and get her dues settled. So at her instance the letter of resignation was typed and the clerk Sanvordekar typed it and the workman put her thumb impression while her husband also countersigned it. The letter was prepared in duplicate and one copy was given to her. He further states that on the letter of resignation the husband of workman has endorsed that he would vacate the room given to his wife by 30-9-84 and that thereafter he would have no right whatsoever on this room. The original letter of resignation is at Exb. E-1 and undoubtedly this is the crux of the whole matter. The workman was supposed to collect the dues which were due to her consequent upon the resignation but she did not approach the witness because she did not vacate the quarters on or before 30th Sept., 1984. In cross examination a case seems to have been made out that the quarters were allotted to the mother of the workman and that the workman continues staying with the mother as a member of her family. In his cross examination further questions are asked about the union leader and the resignation letter but it is neither shown nor even suggested that the letter of resignation was obtained by mis-representation and by fraud. The only suggestion about the letter of resignation made to the witness is that the resignation is taken in irregular manner without following the proper procedure. So, so far as the main aspect of preliminary issue is concerned namely the resignation having been obtained from the workman by mis-representation and by practicing fraud and that consequently it has no legal effect is given a go by and the point now made out in the cross examination is that resignation was obtained by irregular manner without following proper procedure. This is the case which is made out during the trial and I shall have to study the legal implications of the case made out and I shall study the aspect now.

Shri Nigalye the learned advocate for the labourer did make the submissions before me at the bar that the resignation even if signed by the workman on 1-9-84 did not have a legal and binding effect so far as it was not accepted by the management. So he makes out a positive case that the management had not conveyed to the workman that the resignation was not accepted by them. So when the workman did come to know about the fallacy of the letter the workman did take immediate steps to convey to the management that she was withdrawing the resignation and this she had done during the intervening period and this she had done from 1-9-84 to 6-4-84 during which the management had not conveyed to her that her resignation was accepted by them. So the stress here is on the acceptance

of the resignation and Shri Nigalye maintains that so long as the resignation was not accepted the same has no valid effect and for this purpose he relies on two authorities reported in 1964 II LLJ page 401 and II BLR page 790. I wanted to study the principles involved in these authorities and then I shall see whether the non acceptance of the resignation by the management within time goes to the root of the case. So also I shall see whether the workman can change the stand to make out a case of the resignation being invalid due to non acceptance of the resignation by giving a go by to the earlier case of the resignation having been accepted by mis-representation and fraud. So from the very Government reference and the preliminary issue framed by my Predecessor the point which was outstanding for consideration was the resignation having been obtained by mis-representation and by practicing fraud on the illiterate workwoman.

However, during the course of the trial as well as the submissions made before me at the bar this story seems to have been changed and the story as made out in the concluding paragraph of the cross examination of the workwoman is that the resignation is taken from her in an irregular manner without following the proper procedure. Shri Nigalye had read out certain lines connecting the above two authorities to make out this point but these two authorities are not produced before me and it is not possible for me to analyse the position with reference to the observations made by the High Court & Bombay High Court in particular. Considering the reference to the Bombay authority namely II BLR page 790 it appears that it may be an old authority much before the passing of the I.D.A., and I fail to understand how that authority would be relevant for the present enquiry. About the other authority it is not produced and I am unable to discuss the same without the authority being on record.

Upon a careful consideration of the facts and evidence on record and the study of the Govt. reference what this Tribunal is supposed to find out is whether the workman was really removed from service w.e.f. 1-9-84 at all. The Govt. reference clearly requires this Tribunal to find out whether the termination of the workwoman from that day is just and legal in the given circumstances. Be it note here pertinently that there is no reference whatsoever to the tendering of the resignation and the acceptance of the same by the management on or after 1-9-84 and its so called retraction by the workman by her letter dated 6-9-84. This is all together a new case being made out during the trial and the clue to this would be found in the claim statement filed by the workman as back as on 10-7-85. In her claim statement the workwoman states that in January, 1984 she gave birth to a child-exact date of her delivery being 16-1-84. So on her showing she was on leave some days before her delivery and obviously for a couple of months after her delivery. According to her she was to rejoin the services on 2-4-84 but she could not do so due to failing health. Whatever may be the reason on the showing of the workwoman herself she continued to remain absent for 8 months in

1984 till 1-9-84 and obviously a month or two more in 1983. So the main question is regarding the continuous absence of the workwoman for a period of over 10 months attracting the penalties provided under the Standing Orders or the Model Standing Orders as the case may be. So this was a case of abandonment of service and the only question would have been what claim she could make before her employer for benefits on account of her long service on the past. So there is no question of termination of services but this was the case of abandonment and what transpired on 1-9-84 would be relevant for consideration.

On the showing of the workman herself she accompanied by her husband went to the Manager A. Naik who is incidentally examined as witness by the management and the impugned letter of resignation was typed vide Exb. E-1 on which she put her thumb mark and her husband has also counter signed the same in token of the LTM of the workwoman. So a plain reading of the letter of resignation shows that the workwoman was no more interested in continuing with the service and so she voluntarily resigned from the services. The only point of concern to both the employer as well as the employee was the company quarters viz. room in possession of the workwoman and she offered to vacate the same by the end of Sept., 1984 viz. by 30-9-84. The wording is clear, the resignation is voluntary and the only point was regarding the undertaking to vacate the room by that time. In reply to questions in cross examination before me the workwoman admits that since that day she is not working anywhere nor did she tried to get any employment elsewhere because she was not keeping good health. It is suggested to her that she did not go for work for fear of losing the quarters. A reading of her retraction letter dated 5th Sept., 1984 Exb. W-1 shows that she did not want to join the duties by retracting her resignation but she wanted time to rejoin the duties as and when she was medically fit to rejoin the duties and she offered to produce the medical certificate as and when she is fit to resume the duties. In conclusion she has requested the management that she should not be compelled to vacate the accommodation and she wanted to get the matter settled amicably in the interest of both herself and the company. If the circumstances are read in between the lines it is apparently clear that the crux of the whole matter was regarding the vacating of the company quarters and the workwoman was virtually no more interested in the reinstatement into services and even after a lapse of 6 years she has not tried to get service elsewhere. The continued absence for over 8 months before the letter of resignation is a pointer to this and it could be safely concluded that the dispute between the parties is really regarding the vacating of the company quarters and this is not a dispute regarding the termination of the services or its legality or otherwise.

While submitting on this point Shri Sardessai for the management did submit before me that Party II-Employer may take separate steps as regards the company quarters and it was conceded on behalf of the management that this Tribunal need not record a finding as regards the company quarters as it was a separate issue. He, however, maintained that the Government reference must be answered because the Party I, workwoman abandoned the service and because this is not a question of termination of service but this is a case of voluntary quitting the job by tendering a resignation I find that this is what happened in the matter and the issue which is a preliminary issue framed by my Predecessor will have to be answered against the workwoman to hold that she had voluntarily executed the letter of resignation and she has failed to prove her case that the employer obtained the letter of resignation by mis-representation and fraud. It has to be noted that the workwoman was neither mis-represented nor was under any pressure because she was accompanied by her husband who was there to safeguard her interests. On the showing of the workwoman herself she was no more interested in the job because after delivery she was not keeping good health. So in all probability it appears that the discussion was confined to the company quarters and the workwoman undertook to vacate the same by the end of September, 1984 and this point is reiterated in her letter of retraction Exb. W-2 and the company's reply to her. So this is not an industrial dispute as is made out in the Government reference and the workwoman cannot claim any relief in the Government reference. I, therefore, answer the Government reference by passing the following order :

ORDER

It is hereby held that the workwoman Smt. Sharada Bassappa Pujari, Labourer voluntarily tendered the resignation of her services with the management of M/s. Industrial Nacional de Telhas, Sanvordem-Goa on 1-9-1984 and this is not a case of termination from services and so the question whether the termination is legal or otherwise does not arise.

About the company quarters in possession of the Party I, labourer, this Tribunal does not pass any orders and the management of Party II is free to take the necessary legal steps according to law.

In view of the findings as noted above the labourer is not entitled to any relief in this Government reference.

There shall be no order as to costs.

Inform the Government accordingly about the passing of the award.

S. V. Nevagi
Presiding Officer
Industrial Tribunal.